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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No.1756/2004

CORAM: Hon'ble Shri S.R. Nayak, CJ
& Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Petitioner : Gram Panchayat Hadabandh, Development Block- Baghbahara, Post Office Mahasamund, District Mahasamund (Chhattisgarh)
Through Sarpanch Khorbahara Ram Diwan Son of Sikhram aged 47 years, resident of village Hadabandh, Tehsil Distt. Mahasamund (CG)

VERSUS

Respondents :
1. State of Chhattisgarh, Through: Secretary, Mining Mantralaya, D.K.S. Bhawan, Raipur
2. Collector, Mahasamund, District Mahasamund (CG)
3. Chairman, Pollution Control Board. State of Chhattisgarh, Raipur.
4. M/S Orissa Concrete and Allied Industries ltd. R.S.D. Station colony Raipur, Through: Chaturbhuj Agrawal 'Vandana' near circuit house square, Raipur

Writ Petition No.390/2006

Petitioner :
1. Smt. Dehla Bai, Sarpanch, Gram Panchayat-Hadhabandh, District-Mahasamund (C.G.)
2. Baldau Prasad Gram Panchayat Hadhabandh, Block-Bagbahara, District-Mahasamund.

VERSUS

Respondents :
1. State of Chhattisgarh, Through: Secretary, Minral Resources Department, D.K.S. Bhawan, Raipur (C.G.)
2. Collector, Mahasamund,

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District Mahasamund (CG)

3. Orissa Conkrit, Gram-Hadhabandh, Block-Bagbahara, District-Mahasamund (C.G.)

Present:-
Shri J.A. Lohani, learned counsel for the petitioner.
Shri V.V.S. Murthy, Dy. Advocate General for State/respondents No. 1 & 2.
Shri Sudhir Bajpai, learned counsel with Shri R.S. Marhas, counsel for respondent No.3.
Shri B.P. Sharma, learned cousel for respondent No. 4.

ORAL ORDER
(Passed on 31st July, 2006)

The following oral order of the Court was passed by S.R.Nayak, C.J.

Gram Panchayat Hadabandh, Development Block-Baghbahara represented by its Sarpanch, has filed this writ petition initially complaining that the order dated 16.4.2004 marked as Annexure P-1 of the Collector, Distt. Mahasamund, the 2nd respondent herein granting renewal of quarry lease for a period of 10 years from 30.9.2003 to 29.9.2013 is in violation of Chhattisgarh Minor Mineral Rules, 1996 (for short the 'rules') and also on the ground that the operations carried on by the 4th respondent industry in pursuance of the said lease have been polluting the surrounding areas thereby severely affecting local environment as well as health of human beings, cattles, irrigation and etc. In paragraphs Nos. 5.5, 5.6 and 5.7 of the writ petition it is complained thus:-

> "5.5 The reality came immediately after commencement of mining work by the respondent No. 4.The detonators/dynamites of very high power are used for the mining creating a earthquake like vibration in the village. The dust oozes out from the

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mining area for movement of machines and blasting. The movement of heavy earthmover machines, trucks etc. also work as catalyst in creation of clouds of dust. These dusts have spoiled the agricultural field, grazing land of the village. "

"5.6 Due to the vibrations of the blastings, many houses in the villages have cracked, the earthen tyled roof crakes and tiles fell down damaging the inmates by causing injury on the aged and children. The tank of the village remains covered with dust and as a result the water is polluted and is gradually going out of use. At times, big pieces of stones drop from the blues whenever there is a blasting. Such shower of big and small pieces of stones endanger the lives of the villagers and they are always conscious and remain alert of the stone showering. Besides this, the cremation ground has also spoiled due to above reasons. The children studying in school building are afraid of the noise and stone showering. Above all, the school building has also cracked due to the vibration, which may fall down at any point of time. "

"5.7 The respondent No. 4 has neither looked after nor has taken care of the development of the village. It has neither employed and youth nor has constructed the school building as promised. These actions on the part of the Respondent No. 4 have been overlooked by the other respondents and despite in know of these facts. The respondents recommended the renewal of the lease vide recommendation dated 9.3.2004. The copy of which annexed as ANNEXURE P-4. I would be amply clear that the grounds for renewal have been created by making an observation about the welfare of the labourers. As averred earlier, the respondent No. 4 has deployed a very less number of labourers and almost the entire work in the factory is being done and completed by the machines. The employments to

villagers have been given. This order of recommendations have been made without the concurrence of the Gram Panchayat and without even affording any opportunity of hearing to man. "

2. This writ petition was presented in this Court on 25.6.2004. After filing the writ petition, additional pleadings and documents were also filed. Annexure P-12 which is a report submitted by the Regional Officer of Chhattisgarh Environment and Conservation Board dated 24.7.2004. It appears that Regional Officer of Chhattisgarh Environment and Conservation Board, in pursuance of an order issued by the Ministry of Forest, Rehabilitation Environment dated 17.7.2004 had inpected the area in which the 4th respondent has established his industry and submitted his report. As per the said report, during the inspection, the Regional Officer found the following:

1. The industries management has not made any proper management of overburden and specific arrangement of drainage huge deposits of overburden are lying all over at Land area and adjacent grassland, Byron land etc. have not been utilized properly due to which the villagers are facing much difficulties.
2. The work has been affected due to spurting of few amount of small and big stones caused due to un-timed explosion/ blasting work.
3. Nearby plants/trees, grassland and fields are been affected from the dust oozing out due to crushing work.
4. Appropriate royalty has also not been received by the Gram Panchayat query mining work.
5. The said Industries had not paid sufficient Claims to villagers.
6. Noise Pollution is created due to blasting and crushing works

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which specially affecting the school children, in addition to this there is high possibility of damage caused to village buildings due to vibration after blasting.

The matter pertaining to Public Interest therefore it is expected for due action in the subject matter at your level. Kindly examine all the facts at your own level and let the same be informed to this office for the proposed action immediately. "

3. At this stage itself, it needs to be noticed that a letter written by Smt. Delha Bai and Shri Baldau Prasad dated 15-01-2006 to the Chief Justice of this Court complaining against the activities/operations of the 4th respondent was treated as taken-up Writ Petition No.390/2006 and notice was ordered to the respondents.

4. This Court in the context of the allegations made by the petitioner in W.P.No.1756/2004 and the documents produced before it, the Court thought it appropriate to secure the latest status report in order to appreciate whether there is any substance in the allegations levelled against the 4th respondent industry or not. Accordingly, this Court, on 04-05-2005, directed the Chairman, Pollution Control Board or any other Officer duly authorized by him, to conduct a spot inspection along with Collector/Additional Collector, District-Mahasamund within 7 days and to file report. Accordingly, Shri R.P. Tiwari, Superintendent Engineer of Chhattisgarh Environment and Conservation Board who was authorized by the Chairman of the Pollution Control Board to conduct spot inspection along with Additional Collector Mahasamund conducted spot inspection and filed status report on 27-06-2005. At this stage itself, it needs to be noticed that Shri R.P.Tiwari himself was, on an earlier occasion, had filed the report Annexure P-12 dated 24-07-2004. In the report dated 27-06-2005, it is stated thus:-

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"(क) मेसर्स उड़ीसा कांक्रीट एंड एलाइड इंडट्रीज लिमिटेड का खदान एवं **केशर** ग्राम हाड़ाबंध, वि.ख. बागबाहरा तहसील एवं जिला महासमुंद में महासमुंद जिला मुख्यालय से 16 कि.मी. दूर महासमुंद–बागबाहरा रोड के किनारे स्थित है । खदान एरिया तथा केशर यूनिट ग्राम हाड़ाबंध के आवासीय क्षेत्र से लगभग 500 मीटर दूर स्थित है ।

(ख) खदान एवं केशर इकाई को जल (प्रदूषण निवारण तथा नियंत्रण) अधिनियम 1974, एवं वायु (प्रदूषण निवारण तथा नियंत्रण) अधिनियम 1981 के अंर्तगत 06.10.1997 को ब्रोकन एवं क्रस्ड स्टोन्स– 60,000 मीट्रिक टन प्रतिवर्ष उत्पादन के लिये सम्मति दी गई थी । खनन प्रक्रिया मे नियंत्रित ब्लास्टिंग के द्वारा चट्टानो को तोड़ा जाता है । 6 इंच आकार से बड़े प्राप्त पत्थर को केशर मे लेजाया जाकर, केशिंग द्वारा गिट्टी के रूप मे उसके छोटे–छोटे टुकड़े किये जाते है । खनिज विभाग द्वारा उद्योग को 1.4 + 1.27= 2.67 हेक्टेयर क्षेत्र माईनिंग लीज पर दिया गया है ।

(ग) खनन एवं केशींग प्रक्रिया से कुछ मात्रा मे वायु प्रदूषण होता है । जिसके नियंत्रण के लिये वाटर स्प्रे सिस्टम एवं वैक्युम डस्ट कलैक्शन सिस्टम की स्थापना की गई है धूल वायु प्रदूषण का मुख्य स्रोत है जो केशींग के दौरान उत्पन्न होता है । दिनांक 20.05.2005 एवं 28.05.2005 को निरीक्षण के समय उक्त संयंत्र कार्यरत पाये गये ।

(घ) निरीक्षणकर्ता अधिकारियों द्वारा खदान एवं केशर इकाई तथा ग्राम हाड़ाबंध के निरीक्षण से निम्नलिखित तथ्य सामने आते है :–

(1) इकाई द्वारा खनन से प्राप्त ओव्हरबर्डन को उत्खनन एरिया के बाहर ले जाकर श्री विवेक अग्रवाल, संचालक, मेसर्स उड़ीसा कांक्रीट एंड एलाइड इंडट्रीज लिमिटेड,

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हाड़ाबंद की भूमि खसरा नं. 513, रकबा 1.02 हैक्टेयर भूमि मे डम्प किया जा रहा है । अतः ग्राम वासियों का असुविधा का सामना करने जैसी स्थिति वर्तमान मे नही है ।

(2) निरीक्षण के दौरान विस्फोट कराया गया । वर्तमान मे गहराई मे उत्खनन कार्य किया जा रहा है । अतः विस्फोट के कारण छोटे–बड़े पत्थर खदान एरिया के आस–पास गिरते हुये पाये गये । किन्तु इससे कृषकों के कार्यों मे प्रथम दृष्टया विशेष प्रभाव पड़ने जैसी स्थिति नहीं है ।

(3) क्रेशिंग के दौरान उत्पन्न डस्ट का इकाई के परिसर के भीतर एवं आस–पास के क्षेत्रों मे मापन किया गया है । दिनांक 12.05.2005 को इकाई के परिसर मे दो स्थानों पर धूल–कणों की मात्रा का मापन किया गया । जो क्रमशः 413 माइक्रो ग्राम प्रति घन मीटर के आस–पास है । आस–पास के गांव में दो स्थानों पर दिनांक 12.05.2005 को धूल कणों की मात्रा का मापन किया गया, जो क्रमशः 84 एवं 190 माइक्रो ग्राम प्रति घनमीटर पाया गया । यह निर्धारित सीमा 200 माइक्रो ग्राम प्रति घनमीटर के भीतर है । रिर्पोट की प्रति **परिशिष्ट 1** संलग्न है अतः आस–पास के खेतों एवं पेड़ पौंधो पर धूल कणों से कोई विशेष प्रभाव होने जैसी स्थिति नहीं है ।

(4) ग्राम पंचायत हाड़ाबंद को खनन से रायल्टी प्राप्त होता है । इस संबंध मे वर्ष अप्रेल 2001 से 31 मार्च 2002 तक पंचायत राज निधि मे जमा राशि का **परिशिष्ट 1.1** के अनुसार सरल क्रमांक 18 मे ग्राम पंचायत हाड़ाबंद को 88,345/– रूपये प्रदाय किया गया है । **परिशिष्ट 1.1** संलग्न है ।

(5) निरीक्षण के दौरान इकाई के संचालक ने बताया कि उनके द्वारा प्रभावित कृषकों को प्रतिवर्ष रूपये 12,430/– मुआवजा राशि प्रदाय किया जाता है । **परिशिष्ट 1.2** संलग्न है ।

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(6) ब्लास्टिंग एवं क्रशिंग से उत्पन्न ध्वनि प्रदूषण का मापन दिनांक 28.05.2005 को ग्राम हाड़ाबंद के स्कूल के पास किया गया । ध्वनि प्रदूषण स्तर 54.1 डेसीबल पाया गया, जो कि निर्धारित मानक 55 डेसीबल से कम है । परिणाम **मापन रिर्पोट परिशिष्ट 2** संलग्न है । प्रथम दृष्टया ब्लास्टिंग से उत्पन्न कंपन एवं ध्वनि से स्कूली बच्चों को असुविधा होने तथा गांव के भवनों को नुकसान होने जैसी स्थिति नही है ।

(7) ग्राम में सिलिकोसिस बीमारी के संबंध मे मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, महासमुंद से प्रतिवेदन लिया गया । मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी ने अपने पत्र क्रमांक/रो.नि.शि./05 महासमुंद, दिनांक 01.06.2005 द्वारा अवगत कराया है कि सिलिकोसिस तथा फेफड़े से संबंधित बीमारी के मरीज ग्राम हाड़ाबंध में नही पाये गए । प्रतिवेदन की प्रति **परिशिष्ट 3** संलग्न है । ".

5. The petitioners have not filed any objection to the status report dated 27-06-2005. Even otherwise, there is absolutely no good reason for us to doubt the integrity of the said report. We say this, because, on earlier occasion, Shri R.P. Tiwari himself had conducted the enquiry as directed by the Ministry of Forest & rehabilitation had recorded his finding adverse to the industry. It appears that in view of the lacunae pointed out by Shri R.P. Tiwari on earlier occasion, the management of the Industry had cured/removed the deficiencies and provided required infrastructure facilities to confirm to the prescriptions made by the Pollution Control Board, State of Chhattisgarh. As per the latest status report, the operation of the 4th respondent industry does not seem to cause pollution in the area.

6. The Pollution Control Board had issued instructions to the Management of the 4th respondent Factory to remove deficiencies and provide required infrastructure facilities to comply with the statutory

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prescriptions, norms and guidelines. Although, at the time of hearing, learned counsel for the petitioner in Writ Petition No.1756/2004 would submit that the findings now recorded by Shri R.P.Tiwari on the latest status report dated 27-06-2005 do not reflect the current state of affairs and pollution still subsists in the area, we have no good reason to doubt the integrity of the report. No malafide are attributed to Shri R.P.Tiwari. Furthermore, it needs to be noticed that it is not that Shri R.P.Tiwari alone inspected the factory area and drew up the report. He conducted the spot inspection in the presence of Additional Collector, Mahasamund and the Additional Collector, Mahasamund is also a signatory to the report. We cannot doubt the integrity of every government officer as a doubling monster.

7. We are satisfied that as per the latest status report dated 27-06-2005, the fourth respondent industry is not polluting the environment as alleged initially in the Writ Petition. There is no need to further monitor this case. It is accordingly disposed of. No costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

Satish